

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JAN 29 PM 1:00

FORD MOTOR CREDIT COMPANY,
d/b/a PRIMUS FINANCIAL SERVICES and
AMERICAN SUZUKI AUTOMOTIVE CREDIT,

Plaintiff

v.

GREAT ATLANTIC INTERNATIONAL, INC.,
and
CAR CENTER USA, INC.,

Defendants

CIVIL ACTION NO. 03-12556-WGY

PLAINTIFF'S EMERGENCY MOTION
TO QUASH SUBPOENAS

The plaintiff moves for an order to quash the trial witness subpoenas (copies attached) served at the plaintiff's Braintree, Massachusetts branch office on Monday, January 26, 2004, for Gregory C. Smith, Joseph M. McMahon and Michael Howard, on the grounds that each of said subpoenas is unreasonable, oppressive and unduly burdensome in that:

(1) Gregory C. Smith is the Chairman of the Board and Chief Executive Officer of Ford Motor Credit Company, whose office is located in Dearborn, Michigan, and he has no relevant personal knowledge of facts bearing upon the issues of the present suit.

(2) Joseph McMahon is the Vice-President (Eastern Territory) of the plaintiff's divisional operations under the PRIMUS

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion, together with three affidavits and legal memorandum, was served upon the attorney of record for each party by hand this 29th day of January, 2004.


Michael E. Hager, Esquire

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

Eastern

DISTRICT OF

Massachusetts

Ford Motor Credit Company, d/b/a
Primus Financial Services and American
Suzuki Automotive Credit,

Plaintiff,

V.

SUBPOENA IN A CIVIL CASECASE NUMBER:¹ CV03-12556-WGY

Great Atlantic International, Inc.
and Car Center, USA, Inc.

A TRUE COPY ATTEST

William J. Lallier
Process Server & Disinterested Person

Defendants.

TO:

Gregory C. Smith, President
c/o Ford Motor Credit Company, d/b/a Primus Financial Services and
American Suzuki Automotive Credit
25 Braintree Hill Office Park, Suite 300
Braintree, MA 02184

X YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.**

PLACE OF TESTIMONY

United States District Court
One Courthouse Way
Boston, MA 02210

** Please contact the attorney of record listed below
for confirmation regarding when to appear for
testimony

COURTROOM

Courtroom 18

DATE AND TIME

Monday, February 2, 2004 at 9
a.m. and from day to day
thereafter, until the above
entitled action is heard by said
Court.

☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. N/A

DATE AND TIME

☐ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See Schedule "A", attached hereto for list of documents to be produced.

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

¹ If action is pending in district other than district of issuance, state district under case number.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Attorney for Defendants

DATE

1.23.04

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

M. Carolina Avellaneda, Esq. Gadsby Hannah LLP, 225 Franklin Street, Boston, MA 02110-2811. (617) 345-7000

(See Rule 45 Federal Rules of Civil Procedure, Parts C & D on Reverse)

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or whom the subpoena is

addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

«B0249360.DOC;1»

AO 88 (Rev. 1/94) Subpoena in a Civil Case

**Issued by the
UNITED STATES DISTRICT COURT**

Eastern

DISTRICT OF

Massachusetts

Ford Motor Credit Company, d/b/a
Primus Financial Services and American
Suzuki Automotive Credit,

Plaintiff,

V.

Great Atlantic International, Inc.
and Car Center, USA, Inc.

Defendants.

SUBPOENA IN A CIVIL CASECASE NUMBER:¹ CV03-12556-WGY

A TRUE COPY ATTEST



Process Server to Disinterested Person

TO: Michael Howard, Director of Field Operations
c/o Ford Motor Credit Company, d/b/a Primus Financial Services and
American Suzuki Automotive Credit
25 Braintree Hill Office Park, Suite 300
Braintree, MA 02184

X YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.**

PLACE OF TESTIMONY United States District Court One Courthouse Way Boston, MA 02210	** Please contact the attorney of record listed below for confirmation regarding when to appear for testimony	COURTROOM Courtroom 18 DATE AND TIME Monday, February 2, 2004 at 9 a.m. and from day to day thereafter, until the above entitled action is heard by said Court.
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☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. N/A

<input type="checkbox"/> YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See Schedule "A", attached hereto for list of documents to be produced.	DATE AND TIME
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☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

¹ If action is pending in district other than district of issuance, state district under case number.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>M. Carolina Avellaneda</i> Attorney for Defendants	DATE 1.23.04
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER M. Carolina Avellaneda, Esq, Gadsby Hannah LLP, 225 Franklin Street, Boston, MA 02110-2811. (617) 345-7000	

(See Rule 45 Federal Rules of Civil Procedure, Parts C & D on Reverse)

2.

Q.88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE	
DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made,

the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

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(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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«B0249360.DOC;1»

B0347694v1

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Eastern

DISTRICT OF

Massachusetts

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Suzuki Automotive Credit,

Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: CV03-12556-WGY

Great Atlantic International, Inc.
and Car Center, USA, Inc.

Defendants.

A TRUE COPY ATTEST

William L. Lally
Process Server & Disinterested Person

TO: Joseph McMahon, Eastern Territory Vice President
c/o Ford Motor Credit Company, d/b/a Primus Financial Services and
American Suzuki Automotive Credit
25 Braintree Hill Office Park, Suite 300
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